

Meeting Date: 1/13/09

AGENDA REPORT

Agenda Item # 5A

Santa Clara



City of Santa Clara, California



Agency

DATE: December 19, 2008

TO: City Manager for Council Action
Executive Director for Redevelopment Agency Action

FROM: Housing & Community Services Division Manager

SUBJECT: Agreement between the Redevelopment Agency and the Housing Trust of Santa Clara County for Commitment of Funding from the Affordable Housing Fund and Resolutions of the City and the Redevelopment Agency Determining Benefit from the Use of the Affordable Housing Fund

EXECUTIVE SUMMARY:

The Housing Trust of Santa Clara County is the product of a public/private initiative dedicated to build a revolving loan fund and grant program to address the issue of affordable housing in the County of Santa Clara. On April 4, 2008, the Housing Trust petitioned Council with a request for continued funding support of its affordable housing programs. A Funding Agreement, including Resolutions of Benefit to the Redevelopment Project Area, have been prepared in response to the Council and Agency's directives to support the Housing Trust's funding request.

According to the Funding Agreement, the funds may only be directed to affordable housing activities in the City of Santa Clara. The funds can be used to support first-time homebuyer loans, multifamily rental housing production, and homeless and special needs housing projects. The Funding Agreement will be available in the Council Office for review.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The Housing Trust is recognized as a leading promoter and fundraiser for affordable housing within the County. Funds provided to the Housing Trust will be used to assist people and families of very low, low, and moderate income in the City. No disadvantages have been identified.

ECONOMIC/FISCAL IMPACT:

The Funding Agreement commits \$250,000.00, appropriated in the Fiscal Year 2008-09 Capital Improvement Budget (acct # 915-5545-80300-9303).

DATE: December 19, 2008
TO: City Manager for Council Action
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SUBJECT: Agreement Between the Redevelopment Agency and the Housing Trust of Santa Clara County for Commitment of Funding from the Affordable Housing Fund and Resolutions of the City and the Redevelopment Agency Determining Benefit from the Use of the Affordable Housing Fund

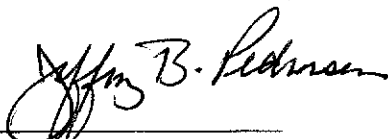
Page 2 of 2

RECOMMENDATION:

1. That the Council and Agency adopt their respective Resolutions determining benefit from the use of the Affordable Housing Fund; and,
2. That the Agency approve and authorize the Executive Director to execute the Agreement with the Housing Trust of Santa Clara County regarding \$250,000.00 commitment of the Redevelopment Agency Affordable Housing Funds.

Certified as to Availability of Funds:
915-5545-80300-9303 \$250,000.00

OK
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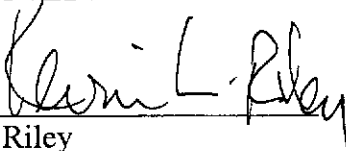


Jeffrey B. Pedersen
Housing & Community Services
Division Manager



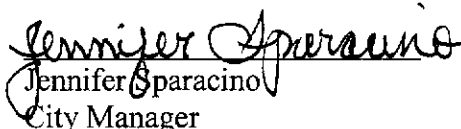
Mary Ann Parrot
Director of Finance
Redevelopment Agency Treasurer

APPROVED:



Kevin Riley
Director of Planning & Inspection

APPROVED:



Jennifer Sparacino
City Manager
Executive Director for Redevelopment Agency

Documents Related to this Report:

- 1) *City and Agency Resolutions*
- 2) *Agreement between the Redevelopment Agency and the Housing Trust of SCCo - in Council Offices*

Document3

RESOLUTION NO. _____(RA)

**A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE
CITY OF SANTA CLARA, CALIFORNIA, APPROVING AN
AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY OF
THE CITY OF SANTA CLARA AND HOUSING TRUST OF SANTA
CLARA COUNTY, AND MAKING FINDINGS WITH RESPECT
THERETO**

**BE IT RESOLVED BY THE AGENCY BOARD OF THE REDEVELOPMENT AGENCY
OF THE CITY OF SANTA CLARA, AS FOLLOWS:**

WHEREAS, the City Council of the City of Santa Clara has heretofore adopted the
Redevelopment Plan (the "Redevelopment Plan") for the Bayshore North Redevelopment Project
("Redevelopment Project") on December 28, 1973 by Ordinance No. 1283; and,

WHEREAS, pursuant to the California Community Redevelopment Law (California Health and
Safety Code Section 33000 *et seq.*) not less than 20% of all taxes which are allocated to the
Redevelopment Agency of the City of Santa Clara ("Agency") must be used by the Agency for the
purpose of increasing, improving and preserving the community's supply of low and moderate
housing available at affordable housing costs to persons and families of low and moderate income,
including very low income persons; and,

WHEREAS, pursuant to Section 33334.2(e) of the Community Redevelopment Law, the Agency
may exercise any and all of its powers to carry out this purpose; and,

WHEREAS, pursuant to Section 33334.6(a) of the Community Redevelopment Law, the
California State Legislature has found and declared that the provision of affordable housing outside
of redevelopment project areas can be of direct benefit to those projects in assisting the
accomplishment of project objectives; and,

WHEREAS, in Fiscal Year 2008-09, the Agency has allocated ten percent (10%) of non-housing tax increment from the Redevelopment Project to supplement the Agency's affordable housing efforts (the "Agency Funds"); and,

WHEREAS, pursuant to Section 33334.2(g) of the Community Redevelopment Law, the Agency may use the Agency Funds to assist in the provision of housing for low or moderate income households outside the Redevelopment Project upon resolution of the City Council and the Agency that such use will be of benefit to the Redevelopment Project; and,

WHEREAS, the Housing Trust of Santa Clara County ("HTSCC") Endowment Fund, an investment pool fund in which private corporations and public agencies participate, has been created and is administered by HTSCC to make loans and grants for affordable housing projects in the City of Santa Clara, including those outside of the Redevelopment Project; and,

WHEREAS, HTSCC has requested that the Agency participate in the HTSCC Endowment Fund, in accordance with that certain Agreement, in the form presented to this Agency, pursuant to which the Agency Funds will be used to increase, improve or preserve housing in the City of Santa Clara that will be affordable to persons and families of low and moderate income, including very low income households; and,

WHEREAS, the Agency has duly considered all terms and conditions of the proposed Agreement and believes that the proposed use of Agency Funds pursuant to the Agreement will be in the best interests of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local law and requirements.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE AGENCY BOARD OF THE REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA, AS FOLLOWS:

1. The Agency hereby finds that the foregoing recitals are true and correct.
2. The Agency hereby finds and determines that the use of Agency Funds pursuant to the Agreement will provide housing opportunities for low- or moderate-income persons, including very low income households.
3. The Agency finds and determines, based on the information set forth in Attachment No. 1 to this Resolution, which is incorporated herein by this reference, that the use of the Agency Funds as authorized by this Resolution will be of benefit to the Redevelopment Project.
4. The Agreement is hereby approved.
5. The Executive Director of the Agency or her designee is hereby authorized to execute the Agreement on behalf of the Agency and to sign all documents necessary and appropriate to carry out and implement the Agreement and to administer the Agency's obligations, responsibilities and duties to be performed under said Agreement.
6. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this Resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Resolution. The Redevelopment Agency of the City of Santa Clara hereby declares that it would have passed this Resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.
7. This Resolution shall take effect upon adoption.
8. The Agency Secretary shall certify to the passage and adoption of this Resolution, shall

enter the same in the Book of Resolutions of said Agency, and shall cause the action of the Chairman and Governing Board in adopting the same to be entered in the official minutes of said Governing Board.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE AGENCY BOARD OF THE REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE _____ DAY OF _____, 2009, BY THE FOLLOWING VOTES:

AYES: AGENCY MEMBERS:

NOES: AGENCY MEMBERS:

ABSENT: AGENCY MEMBERS:

ABSTAINED: AGENCY MEMBERS:

ATTEST:

ROD DIRIDON, JR.
SECRETARY OF THE
REDEVELOPMENT AGENCY OF
THE CITY OF SANTA CLARA

Attachments Incorporated by Reference:

1. Benefit to the Redevelopment Project Area

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ATTACHMENT NO. 1

Benefit to the Redevelopment Project Area

The use of funds from the Bayshore North Redevelopment Project (the "Redevelopment Project") as set forth in the Agreement will be of benefit to the Redevelopment Project, as follows:

The Redevelopment Plan for the Bayshore North Redevelopment Project restricts the land uses in the Redevelopment Project area to non-residential uses. Accordingly, there are no opportunities to develop affordable housing in the Bayshore North Project. In Section 33334.6 of the California Health and Safety Code, the State Legislature has found and declared that the provision and improvement of affordable housing outside of redevelopment project areas can be of direct benefit to those projects in assisting the accomplishment of project objectives whether or not those redevelopment projects provide for housing within the project area. By providing affordable housing for very low, low, and moderate income persons in the City of Santa Clara, the Agreement will benefit the Redevelopment Project by providing affordable housing for a segment of the population of the City of Santa Clara in need of affordable housing, and by providing and enhancing the physical, economic and social conditions needed to prevent the recurrence of blight in the Redevelopment Project and elsewhere in the City of Santa Clara.

**AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY
OF THE CITY OF SANTA CLARA AND HOUSING TRUST
OF SANTA CLARA COUNTY REGARDING A CONTRIBUTION
BY THE REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA**

THIS AGREEMENT is made and entered into as of _____, 20____, by and between THE REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA ("Agency") and HOUSING TRUST OF SANTA CLARA COUNTY ("HTSCC"), a California nonprofit corporation.

RECITALS

- A. HTSCC administers an investment pool fund ("HTSCC Funds") in which private corporations and public agencies participate, created for the purpose of establishing a revolving loan fund and grant-making program to address the issue of affordable, available housing in Santa Clara County.
- B. Pursuant to the Community Redevelopment Law of the State of California, Section 33000 *et seq.* of the California Health and Safety Code ("Redevelopment Law"), the City Council of the City of Santa Clara has approved and adopted the redevelopment plan for the Bayshore North Redevelopment Project ("Redevelopment Project").
- C. For fiscal year 2008-2009, the Agency will allocate ten percent (10%) of non-housing tax increment from the Redevelopment Project to supplement the Agency's affordable housing efforts ("Agency Funds").
- D. The Agency desires to increase, improve or preserve affordable housing for persons and families of low and moderate income in the City of Santa Clara by contributing a portion of the Agency Funds to HTSCC, as specified in this Agreement.
- E. The purpose of this Agreement is to set forth the mutual agreement of the Agency and HTSCC regarding the use of the Agency Funds by HTSCC.

In view of the above, the parties agree as follows:

SECTION 1 AUTHORITY AND STATUS OF HTSCC

HTSCC represents and warrants that the information contained in this Agreement is true and accurate to the best of its knowledge, and that it is a duly organized, validly existing nonprofit corporation in good standing under the laws of its place of incorporation; that its signatory to this Agreement is authorized by resolution, bylaws, or constitution of the nonprofit corporation, currently, in full force and effect, to execute this Agreement on HTSCC's behalf.

SECTION 2 TERM OF THIS AGREEMENT: DEPOSIT OF AGENCY FUNDS WITH HTSCC

- 2.1 The term of this Agreement shall be for a period of two years, commencing July 1, 2008 and ending June 30, 2010 ("Term").
- 2.2 For the Term, Agency agrees to deposit the sum of Two Hundred Fifty Thousand Dollars (\$250,000) with HTSCC within 30 days after the mutual execution of this Agreement.

SECTION 3 USE OF AGENCY FUNDS BY HTSCC

- 3.1 HTSCC agrees that no fees will be charged to the Agency Funds on deposit with HTSCC for administrative or overhead costs, including, but not limited to, fundraising expenses, except that the sole administrative expenses which may be charged to Agency Funds on deposit with HTSCC shall be as set forth in Section 6.
- 3.2. In addition to the restriction and prohibition set forth above in Section 3.1, HTSCC agrees that HTSCC shall only use the Agency Funds in accordance with all of the following restrictions, prohibitions, terms and conditions:
 - 3.2.1. Agency Funds may only be used for the following three types of housing programs/projects: first time homebuyer loans, multifamily rental housing projects, and homeless and special needs housing projects (collectively as, "Permitted Programs"). The Agency Executive Director or designee shall have the right to reasonably determine whether any disbursement of Agency Funds will be or has been made for a Permitted Program.
 - 3.2.2. With respect to housing programs/projects for multifamily rental housing projects or homeless and special needs housing projects, HTSCC agrees that:

- 3.2.2.1. Agency Funds may only be used to assist any such projects which serve no less than seven (7) persons; and
- 3.2.2.2. HTSCC will provide pre-funding notification to the Agency at least sixty (60) days prior to committing Agency Funds to any such project. The pre-funding notification shall provide information necessary to the satisfaction of the Agency Executive Director or designee for determining consistency with local plans and state law requirements, e.g., project budget, sources and uses of funds, number of units assisted, affordability provisions and enforcement methods, and funding repayment, reinvestment and/or recapture requirements.
- 3.2.3. Agency Funds may only be used for projects which increase, improve or preserve affordable housing in the City of Santa Clara.
- 3.2.4. Agency Funds may only be used for projects where the housing is made available at an affordable housing cost to persons and families of low or moderate income, or very low income households, as those terms are defined in Sections 50052.5, 50053, 50079.5, 50093 and 50105 of the California Health and Safety Code Sections, as applicable.
- 3.2.5. Agency Funds may only be used for projects that provide financial assistance using methods set forth in California Health and Safety Code Section 33334.2(e).
- 3.2.6. For any project with new or substantially rehabilitated housing units that are developed, financed or assisted, in whole or in part, with the Agency Funds, the housing units must be available at affordable housing costs to, and occupied by, persons and families of low or moderate income and very low income, or extremely low income households, as the case may be, for the longest feasible time, but not less than (a) fifty-five (55) years for rental units, or (b) forty-five (45) years for owner-occupied units, in accordance with California Health and Safety Code Sections 33334.3(f) and (g).
- 3.2.7. Agency Funds may only be used for projects for which HTSCC has entered into a contractual commitment to disburse the Agency Funds within the two year Term of this Agreement. Agency Funds may only be used for projects for which HTSCC has entered into a contractual commitment within the 2008-2009 and 2009-2010 fiscal years (July 1, 2008 through June 30, 2010) to disburse the Agency Funds.

3.2.8. Agency Funds must be disbursed in accordance with the contractual commitment entered into by HTSCC as described in the preceding Section 3.2.7 within twelve months following the date of such contractual commitment. For example, if HTSCC enters into a contractual commitment to disburse Agency Funds on September 30, 2009, then those Agency Funds must be disbursed in accordance with such contractual commitment by September 29, 2010.

3.2.9. All deeds, leases or contracts relating to any project using Agency Funds shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

3.2.9.1. In deeds: "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

3.2.9.2. In leases: "The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, or ancestry in the leasing, subleasing, renting, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall the lessee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein leased."

- 3.2.9.3. In contracts: "There shall be no discrimination against or segregation of any person, or group of persons on account of race, color, religion, ancestry, national origin, sex, or marital status in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the lessees, subtenants, sublessees or vendees of the land."
- 3.2.10. Agency funds may only be used for projects that provide for the repayment, reinvestment or recapture of Agency Funds whereby third-party users or recipients of Agency Funds are obligated to repay, reinvest and/or recapture to HTSCC Funds the principal investment of the Agency Funds for the purpose of future reinvestment in affordable housing projects within the City of Santa Clara which meet all of the restrictions, prohibitions, terms and conditions of this Section 3.2.
- 3.2.11. The restrictions, prohibitions, terms and conditions of this Section 3.2 shall apply not only to the initial use of the Agency Funds by HTSCC but also to any reinvested, repaid or recaptured funds.
- 3.2.12. All disbursements by HTSCC shall be made with the advice and suggestion of HTSCC's Board of Directors. HTSCC shall follow the recommendations regarding disbursements rendered by HTSCC's Board of Directors unless to do so would be a violation of law, this Agreement, or HTSCC's Articles of Incorporation or Bylaws.
- 3.2.13. For any new or substantially rehabilitated units that are developed, financed or assisted, in whole or part, with the Agency, the total amount of the disbursement of the Agency Funds by HTSCC shall not exceed fifty percent (50%) of the costs of producing such units.
- 3.2.14. HTSCC shall record, or provide for the recording of, in the Office of the Santa Clara County Recorder covenants or restrictions implementing Sections 3.2.6, 3.2.9 and 3.2.10 for each parcel or unit of real property obtaining or using any portion of Agency Funds, which covenants or restrictions shall run with the land and shall be enforceable, against the original owner and any successors in interest, by the Agency, City and HTSCC. The covenants or restrictions shall also provide that HTSCC (or, if HTSCC is not the owner of such parcel or unit of real property, that the

owner of such parcel or unit of real property) for itself, its successors, and its assigns and every successor in interest to each parcel or unit of real property covenants and agrees to submit to the Agency an annual report (the "Annual Report") required by California Health and Safety Section 33418. The Annual Report shall include for each rental unit, the rental rate and the income and family size of the occupants, and for each owner-occupied unit whether there was a change in ownership from the prior year and, if so, the income and family size of the new owners. The income information required by this Section shall be supplied by the occupant or owner, as applicable, in a certified statement on a form approved by the Agency Executive Director or designee.

- 3.2.15. HTSCC shall immediately refund to the Agency any portion of the Agency Funds that have not been disbursed by HTSCC, or are not being used, in accordance with all of the restrictions, prohibitions, terms and conditions of this Agreement, including, without limitation, Agency Funds which have not been disbursed or used in accordance with any of the restrictions, prohibitions, terms and conditions set forth in Section 3.2.1 through 3.2.14, above.

SECTION 4 INVESTMENT OF HTSCC FUNDS

HTSCC agrees to hold, manage, invest and reinvest HTSCC Funds in accordance with the "reasonably prudent person" standard.

SECTION 5 FINANCIAL AND COMPLIANCE REPORTS

- 5.1 HTSCC agrees to establish and maintain, in accordance with generally accepted accounting principles, a complete record of all financial transactions related to HTSCC Funds. HTSCC agrees that Agency shall have, at no cost to Agency, the right at all reasonable times to inspect the books and records of HTSCC as pertinent to the purposes of this Agreement.
- 5.2 Within sixty (60) days following the end of each quarter, HTSCC agrees to provide Agency with quarterly reports which shall set forth in detail all financial transactions related to HTSCC Funds.
- 5.3 HTSCC agrees to provide Agency with a copy of its annual audited report, prepared by independent certified public accountants. The audited report shall be provided to Agency within ten (10) business days following its completion.

- 5.4 HTSCC agrees to provide Agency with a written report of each and every disbursement of Agency Funds. The written report shall be provided to Agency within a reasonable period of time following any such disbursement, which in no event shall exceed thirty (30) days from the date of such disbursement. The written report shall include, at a minimum, all of the following:
- 5.4.1 Location and description of the assisted project(s);
 - 5.4.2 Number of units; rent or sale price and income restrictions;
 - 5.4.3 Term of restrictions;
 - 5.4.4 Fully executed copies of any and all promissory notes, deeds of trust and other related loan documents detailing terms and conditions of the disbursement;
 - 5.4.5 Fully executed copies of any and all recorded covenants or restrictions, with County Recorder recording stamp which includes recording information;
 - 5.4.6 Fully executed copies of any and all affordability restrictions to the extent not contained in the documents described in Section 5.4.5, above;
 - 5.4.7 Copies of any and all applicable project management plans that detail operations and affordability enforcement policies, including, without limitation, leases, grievance procedures, and income certification;
 - 5.4.8 For development projects, an independent audit of construction costs;
 - 5.4.9 Information required by the Agency considered necessary to determine compliance with local affordable housing strategies and California Community Redevelopment Law; and
 - 5.4.10 Any other information or documentation reasonably requested by the Agency Executive Director or designee.

- 5.5 HTSCC agrees to provide the Agency within fifteen (15) days following written request therefore from the Agency Executive Director or designee, a written report of all proposed or actual contractual commitments pursuant to which Agency Funds would be disbursed. The written report shall include, at a minimum, the following information: location and description of the project(s); number of units; rent or sale price and income restrictions; term of restrictions; information required by the Agency considered necessary to determine compliance with local affordable housing strategies and California Community Redevelopment Law, and any other information or documentation reasonably requested by the Agency Executive Director or designee.

SECTION 6 ADMINISTRATIVE FEES

HTSCC may charge an annual administrative fee equal to ten percent (10%) of the Agency Funds contributed to HTSCC in any fiscal year, but in no event shall such fee exceed \$25,000 in any fiscal year. Commencing on the date of deposit of Agency Funds with HTSCC, no more than one-twelfth (1/12) of the annual administrative fees will be deducted monthly. HTSCC shall report to the Agency the fees charged against the Agency Funds in its quarterly and annual reports.

SECTION 7 NOTICES

Any notice to be given or other document to be delivered by one party to the other party, may be delivered in person to the other party, may be delivered by depositing such notice or document in the United States mail, duly certified or registered, return receipt requested, with postage prepaid, or with a reputable same-day or overnight delivery service, or may be delivered by facsimile machine if concurrently delivered by another permissible method set forth in this Section, and addressed to the party for whom intended, as set forth below.

Either party hereto may from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified. Unless otherwise specifically provided for herein, all notices, payments, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given and received upon the earliest of the following occurrences, as applicable: (a) upon personal delivery; or (b) as of the third business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth below; or (c) the immediately succeeding business day after deposited with Federal Express or other similar overnight delivery system; or (d) upon confirmation of receipt (printed by the transmitting facsimile machine) if delivered by facsimile machine.

Agency: Redevelopment Agency of the City Santa Clara
 Attn: Executive Director
 1500 Warburton Avenue
 Santa Clara, California 95050

HTSCC: Housing Trust of Santa Clara County
 95 S. Market Street, Suite 550
 San Jose, California 95113

SECTION 8 COMPLIANCE WITH ALL LAWS

HTSCC shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments, including, but not limited to applicable prevailing wage requirements set forth in California Labor Code Section 1720, *et seq.* HTSCC shall indemnify, protect, defend and hold harmless the Agency, City and their respective officers, employees, contractors and agents, with counsel reasonably acceptable to Agency and City, from and against any and all loss, liability, damage, claim, cost, expense, and/or "increased costs" (including labor costs, penalties, reasonable attorneys fees, court and litigation costs, and fees of expert witnesses) which, in connection with this Agreement, results or arises in any way from any of the following: (1) the noncompliance of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages); (2) the implementation of Chapter 804, Statutes of 2003; (3) the implementation of Sections 1726 and 1781 of the Labor Code, as the same may be enacted, adopted or amended from time to time, or any other similar law; (4) failure to provide any required disclosure representation, statement, rebidding and/or identification which may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law; and/or (5) failure to provide and maintain any and all bonds to secure the payment of contractors (including the payment of wages to workers performing any public work) which may be required by the Civil Code, Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. "Increased costs" as used in this Section shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time. The foregoing indemnity shall survive termination of this Agreement.

SECTION 9 MISCELLANEOUS PROVISIONS

- A. The parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of California. In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

- B. The headings of the sections and subsections of this Agreement are inserted for convenience only. They do not constitute a part of this agreement and shall not be used in its construction.
- C. The waiver by any party to this agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.
- D. Any and all exhibits which are referred to in this Agreement are incorporated herein by reference and are deemed a part of this Agreement. This Agreement may only be amended by formal written agreement executed by both parties.
- E. If a court of competent jurisdiction adjudges any provision of this Agreement as void or unenforceable, the remaining provisions shall not be affected hereby and shall remain in full force and effect; provided that construction of the agreement without the invalid or unenforceable provision does not deprive the parties of the benefit of their bargain.
- F. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Agreement.
- G. This Agreement, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.
- H. The parties to this Agreement acknowledge and agree that the provisions of this Agreement are for the sole benefit of Agency and HTSCC, and not for the benefit, directly or indirectly, of any other person or entity, except as may be otherwise expressly provided herein.
- I. This Agreement may be executed by each party on a separate signature page, and when the executed signature pages are combined with the balance of the Agreement, it shall constitute one single instrument.
- J. If any action or proceeding arising out of or relating to this Agreement is commenced by either party to this Agreement, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs and expenses incurred in the action or proceeding by the prevailing party.
- K. Where this agreement refers to Agency and no Officer of the Agency is named, the

Agency Executive Director or designee shall have the authority to act on the Agency's behalf.

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[signatures on following pages]

THE HOUSING TRUST OF SANTA CLARA COUNTY

By: 
Kevin Zwick
Executive Director

[remainder of page left intentionally blank]

[signatures on following page]

THE REDEVELOPMENT AGENCY
OF THE CITY OF SANTA CLARA,
CALIFORNIA

Date: _____

By: _____
Jennifer Sparacino
Executive Director

ATTEST:

By: _____
Ron Diridon, Jr.
Secretary

APPROVED AS TO FORM:

By: _____
Helene Leichter
Agency General Counsel

CITY OF SANTA CLARA
AGENDA MATERIAL ROUTE SHEET

Council Date: January 13, 2009

SUBJECT: Funding Agreement with the Housing Trust of Santa Clara County and Resolutions of the City and Redevelopment Agency Determining Benefit from the Use of the Affordable Housing Fund

CERTIFICATION

The proposed Agreement and Resolutions
Regarding Agency funding for affordable housing purposes has been reviewed and is hereby certified.

PUBLICATION REQUIRED: Not Applicable

The attached Notice/Resolution/Ordinance is to be published _____ time(s) at least _____ days before the scheduled meeting/public hearing/bid opening/etc., which is scheduled for _____, 200__.

AUTHORITY SOURCE FOR PUBLICATION REQUIREMENT:

Federal Codes:

Title _____ U.S.C. § _____
(Titles run 1 through 50)

California Codes:

Code _____ § _____
(i.e., Government, Street and Highway, Public Resources)

Federal Regulations:

Title _____ C.F.R. § _____
(Titles run 1 through 50)

California Regulations:

Title _____ California Code of Regulations § _____
(Titles run 1 through 28)

City

City Charter § _____ (i.e., 1310. Public Works Contracts. Notice published at least once at least ten days before bid opening)

City Code § _____

1. As to City Functions, by

Kerri L. Riley
Department Head

2. As to Legality, by

Lindsay Speck
City Attorney's Office 08.1732

3. As to Environmental
Impact Requirements, by

Kerri L. Riley
Director of Planning and Inspection

4. As to Substance, by

J. Sparacino
City Manager

Revision Date June 7, 2005